

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRADE CONTRACTING COMPANY, INC.

and

Case 7--CA--31739

RICHARD G. SWINEY, an Individual

and

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 1076, AFL--CIO
Party to the Contract

November 8, 1991

DECISION AND ORDER

By Chairman Stephens and Members Donovan and Orviatt

Upon a charge filed by Richard G. Swiney on April 8, 1991,¹ the General Counsel of the National Labor Relations Board issued a complaint on May 24² against Trade Contracting Company, Inc. (the Respondent) alleging that it had violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint and amendment to complaint, the Respondent has failed to file an answer.

On August 14, the General Counsel filed a Motion for Summary Judgment. On August 19, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause Why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ All dates are in 1991, unless specified otherwise.

² An amendment to the complaint was issued on June 27.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from the service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board."³ Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letters dated June 12 and July 15 and 26, notified the Respondent that unless an answer was received respectively by June 26, July 25, and August 2, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Michigan corporation, is engaged in the performance of construction work as a general contractor for commercial buildings. During the calendar year ending December 31, 1990, a representative period, the Respondent had gross revenues in excess of \$500,000 and purchased lumber, coal, and other building supplies valued in excess of \$50,000 from various enterprises including, but not limited to, Erb Lumber, Koenig Fuel and Supply Co., and Wallich Lumber Co., which each purchased and caused lumber, coal, and

³ The amendment to the complaint, which concerns commerce data, states that unless an answer is filed within 14 days of service, "all of the allegations in the Amendment to the Complaint shall be deemed to be admitted true and may be so found by the Board."

other building supplies valued in excess of \$50,000 to be transported to their facilities in Michigan directly from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Laborers' International Union of North America, Local 1076, AFL--CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Unit and the Union's Representative Status

The Respondent and Laborers' International Union of North America, Local 1076, AFL--CIO (the Union) have been parties to a collective-bargaining agreement effective May 1, 1990, through June 1, 1991. The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laborers employed by the Respondent, excluding guards and supervisors as defined in the Act.

At all times material, the Union, by virtue of Section 8(f) of the Act, has been and is the limited exclusive representative of the unit employees for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. See John Deklewa & Sons, 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988).

B. The Violations

Since about December 1990 and continuing thereafter, the Respondent unilaterally and without notice to the Union has failed and refused to make contractually required contributions to the vacation and holiday benefit fund on behalf of the Charging Party, Richard G. Swiney. By the above conduct, the Respondent has failed and refused, and is failing and refusing, to bargain in good faith with its employees' representative, the Union, and thereby has

engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

Conclusions of Law

By failing and refusing to make contractually required contributions to the vacation and holiday benefit fund on behalf of the Charging Party, Richard G. Swiney, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order that the Respondent, on request, bargain with the Union as the 8(f) representative of its unit employees. We shall also order that the Respondent make the contractually required vacation and holiday benefit fund payments on behalf of the Charging Party, Richard G. Swiney, with any additional amounts computed as provided in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Trade Contracting Company, Inc., Royal Oak, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Laborers' International Union of North America, Local 1076, AFL--CIO, as the 8(f) representative of the employees in the bargaining unit by failing and refusing

to make contractually required contributions to the vacation and holiday benefit fund on behalf of the Charging Party, Richard G. Swiney.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the contractually required contributions to the vacation and holiday benefit fund on behalf of the Charging Party, Richard G. Swiney, in the manner set forth in the remedy section of this decision.

(b) On request, bargain in good faith with Laborers' International Union of North America, Local 1076, AFL--CIO, as the 8(f) representative of the employees in the unit below:

All laborers employed by the Respondent, excluding guards and supervisors as defined in the Act.

(c) Post at its facility in Royal Oak, Michigan, copies of the attached notice marked "'Appendix.'"⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 8, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 8, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice.

WE WILL NOT fail and refuse to bargain collectively with Laborers' International Union of North America, Local 1076, AFL--CIO, as the 8(f) representative of our employees in the bargaining unit described below by failing and refusing to make contractually required contributions to the vacation and holiday benefit fund on behalf of Richard G. Swiney.

WE WILL NOT in any like or related manner interfere with restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with Laborers' International Union of North America, Local 1076, AFL--CIO, as the 8(f) representative of our employees in the following appropriate unit:

All laborers employed by us, excluding guards and supervisors.

WE WILL make the contractually require contributions to the vacation and holiday benefit fund on behalf of Richard G. Swiney, with interest.

TRADE CONTRACTING COMPANY, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313--226--3219.